

CHAPTER 24:05:14

ADMINISTRATION

Section

24:05:14:01	Interagency agreements.
24:05:14:01.01	Coordination of services.
24:05:14:01.02	Obligation of noneducational public agencies.
24:05:14:01.03	Children with disabilities covered by public <u>benefits or insurance</u> .
24:05:14:01.04	Children with disabilities covered by private insurance.
24:05:14:01.05	Use of Part B funds for insurance costs.
24:05:14:02 to 24:05:14:12	Repealed.
24:05:14:13	Performance goals and indicators.
24:05:14:14	Participation in assessments.
<u>24:05:14:14.01</u>	<u>Alternate assessments.</u>
24:05:14:15	Reports relating to assessments.
<u>24:05:14:15.01</u>	<u>Use of universal design in assessments.</u>
24:05:14:16	Suspension and expulsion rates.
<u>24:05:14:17</u>	<u>Access to instructional materials.</u>
<u>24:05:14:18</u>	<u>State advisory panel - - General.</u>
<u>24:05:14:19</u>	<u>State advisory panel - - Membership.</u>
<u>24:05:14:20</u>	<u>State advisory panel - - Duties.</u>
<u>24:05:14:21</u>	<u>Prohibition on mandatory medication.</u>

24:05:14:01. Interagency agreements. The ~~division~~ department shall develop and implement interagency agreements with the Departments of Social Services, Health, Human Services, and Corrections for the purpose of describing the role that each of these agencies plays in providing or paying for special education or related services for children with disabilities. These interagency agreements shall define the financial responsibility of each agency for providing children with disabilities with free appropriate public education, establish procedures for resolving interagency disputes among agencies that are parties to the agreement, and establish conditions, terms, and procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

The financial responsibility of each noneducational public agency described in this section, including the state ~~medical~~ Medicaid agency and other public insurers of children with disabilities, precedes the financial responsibility of local educational agencies or the state agency responsible for developing the child's individualized education program.

This section does not allow an agency to reduce medical and other assistance available to children with disabilities to receive services that are also part of a free appropriate public education or to alter the requirements and eligibility of a child with

disabilities under Title V, maternal and child health; Title XIX, Medicaid; or Title XXI of the Social Security Act; or under any other public benefits or insurance program including those required by federal statute.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:14:01.02. Obligation of noneducational public agencies. If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to § 24:05:14:01, to provide or pay for any services that are also considered special education or related services such as assistive technology devices and services, related services described under § 24:05:27:16, supplementary aids and services, and transition services described under § 24:05:27:13.02, that are necessary for providing a free appropriate public education to children with disabilities within the state, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangements pursuant to § 24:05:14:01.

A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the school district or state agency responsible for developing the student's IEP shall provide or pay for these services to the student in a timely manner. The school district or state agency may then claim reimbursement for the services from the public agency that failed to provide or pay for these services and that agency shall reimburse the school district or state agency in accordance to the terms of the interagency agreements described in § 24:05:14:01.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:01.03. Children with disabilities covered by public benefits or insurance. A public agency may use the Medicaid or other public benefits or insurance ~~benefits~~ programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.05, may pay the cost that the parent otherwise would be required to pay; ~~and~~

(3) May not use a student's benefits under a public benefits or insurance program if that use would:

- (a) Decrease available lifetime coverage or any other insured benefit;
- (b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
- (c) Increase premiums or lead to the discontinuation of benefits or insurance; or
- (d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(4) Must obtain parental consent consistent with § 24:05:29:13 each time that access to public benefits or insurance is sought; and

(5) Must notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:01.05. Use of part B funds for insurance costs. If a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance if the parent would incur a cost for a specified service required under this article, to ensure FAPE, the public agency may use funds obtained through Part B of IDEA to pay for the service.

To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use funds obtained through Part B of IDEA to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

Proceeds from public benefits or insurance or private insurance may not be treated as program income for purposes of 34 C.F.R. § 80.25.

If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this article, those funds are not considered "state or local" funds for purposes of the maintenance of effort provisions in this article.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:13. Performance goals and indicators. The ~~division~~ department shall ~~establish~~ have in effect established goals for the performance of children with disabilities in the state that:

(1) Promote the purposes of Part B of the Individuals with Disabilities Education Act; and

~~(2) Are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the state~~

(2) Are the same as the state's objectives for progress by children in its definition of adequate yearly progress, including the state's objectives for progress by children with disabilities, under the ESEA;

(3) Address graduation rates and dropout rates, as well as such other factors as the state may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the state.

The ~~division~~ department shall ~~establish~~ have in effect established performance indicators that the state shall use to assess progress toward achieving the above goals including measurable annual objectives for progress by children with disabilities under the ESEA. ~~that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates. Every two years~~ Annually, the ~~division~~ department shall report to the U.S. Secretary of Education and the public on the progress of the state, and of children with disabilities in the state, toward the goals established under this section, which may include elements of the reports required under the ESEA. ~~Based on its assessment of that progress, the division shall revise its state improvement plan under subpart 1 of Part D of the Individuals with Disabilities Education Act as may be needed to improve the state's performance, if the division receives assistance under that subpart.~~

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:14. Participation in assessments. ~~Children~~ All children with disabilities shall be included in all general state and district-wide ~~assessments~~ assessment programs, including assessments described in the ESEA, with appropriate accommodations and ~~modifications~~ alternate assessments if necessary and as indicated in their respective IEPs. As appropriate, the ~~division~~ department or local educational agencies shall develop guidelines for the provision of appropriate accommodations.

~~(1) Develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in state and district wide assessments;~~

~~(2) Develop alternate assessments; and~~

~~(3) Beginning not later than July 1, 2000, conduct alternate assessments~~

The department's or local educational agencies' guidelines for the provision of appropriate accommodations shall:

(1) Identify only those accommodations for each assessment that do not invalidate the score; and

(2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:14.01. Alternate assessments. As appropriate, the department or local educational agency shall develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments even with accommodations as indicated in their respective individualized education programs. The alternate assessments and guidelines shall provide for alternate assessments that:

(1) Are aligned with the state's challenging academic content standards and challenging student academic achievement standards;

(2) If the state has adopted modified academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with disabilities against those standards; and

(3) If the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with the most significant cognitive disabilities against those standards.

As appropriate, the department or local educational agency shall provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards, such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma.

As appropriate, the department or local educational agency shall ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

Source:

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:15. Reports relating to assessments. ~~The division~~ As appropriate, the department or local educational agency shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

(1) The number of children with disabilities participating in regular assessments and in alternate assessments the number of those children who were provided accommodations that did not result in an invalid score in order to participate in those assessments;

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards;

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards;

(4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards; and

~~(2) (5) The performance results of children with disabilities on regular assessments and alternate assessments, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children~~
Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if:

(a) The number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information; and

(b) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

~~Reports to the public shall include aggregated data that include the performance of children with disabilities together with all other children and disaggregated data on the performance of children with disabilities.~~

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:15.01. Use of universal design in assessments. As appropriate, the department or local educational agency shall, to the extent possible, use universal design principles in developing and administering any assessments under this section.

Source:

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-3.7-1.1

24:05:14:16. Suspension and expulsion rates. The ~~division~~ department shall examine data, including data disaggregated by race and ethnicity, from local education agencies and other state agencies, as appropriate, to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local educational agencies in the state or ~~and~~ compared to the rates for nondisabled children within the agencies. If discrepancies are occurring, the ~~division~~ department shall review and, if appropriate, revise or require the affected local education agency or state agency to revise its policies, procedures, and practices relating to:

- (1) The development and implementation of individualized education programs;
- (2) The use of positive behavioral interventions and supports; and
- (3) Procedural safeguards to ensure that these policies, procedures, and practices comply with the Individuals with Disabilities Education Act, Part B.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:17. Access to instructional materials. The department shall adopt the National Instructional Materials Accessibility Standard (NIMAS), for the purposes of providing instructional materials to blind persons or other persons with print disabilities. Blind persons or other persons with print disabilities means children served under this article who qualify to receive books and other publications produced in specialized formats in accordance with the federal Act to Provide Books for Adults who are Blind, in accordance with 2 U.S.C 135a, as amended to January 1, 2007.

In implementing NIMAS, the department shall coordinate with the National Instructional Materials Accessibility Center (NIMAC), and the department:

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to:

(a) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(b) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats;

(2) Shall provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

In carrying out this section, the department, to the maximum extent possible, shall work collaboratively with the state agency responsible for assistive technology programs.

Source: .

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:18. State advisory panel - - General. The department shall establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

Source: .

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:19. State advisory panel - - Membership. The advisory panel must consist of members appointed by the Governor, or any other official authorized under state law to make such appointments, be representative of the state population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including:

- (1) Parents of children with disabilities, ages birth through 26;
- (2) Individuals with disabilities;
- (3) Teachers;
- (4) Representatives of institutions of higher education that prepare special education and related services personnel;
- (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2007;
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools;
- (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- (10) A representative from the state child welfare agency responsible for foster care; and
- (11) Representatives from the state juvenile and adult corrections agencies.

A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities, ages birth through 26.

Source: .

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:20 State advisory panel - - Duties. The advisory panel shall:

(1) Advise the department of unmet needs within the state in the education of children with disabilities;

(2) Comment publicly on any rules proposed by the department related to the education of children with disabilities;

(3) Advise the department in developing evaluations and reporting on data to the U.S. Secretary of Education under section 618 of the IDEA;

(4) Advise the department in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the IDEA; and

(5) Advise the department in developing and implementing policies related to the coordination of services for children with disabilities.

Source: .

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1

24:05:14:21. Prohibition on mandatory medication. State and school district personnel may not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act, as amended to January 1, 2007, for a child as a condition of attending school, receiving an evaluation under chapter 24:05:25, or receiving services under this article.

Nothing in this section may be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians related to a student's academic and functional performance, or behavior in the classroom or school, or related to the need for evaluation for special education or related services under chapter 24:05:22 related to child find.

Source:

General Authority: SDCL 13-37-1.1

Law Implemented: SDCL 13-37-1.1